

# HB0316S01 compared with HB0316

~~text~~ shows text that was in HB0316 but was deleted in HB0316S01.

inserted text shows text that was not in HB0316 but was inserted into HB0316S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

## INMATE ASSIGNMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** {}Karianne Lisonbee

**Senate Sponsor:** {}\_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill addresses inmate housing assignments.

#### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits, with limited exceptions, the Department of Corrections or a county jail from assigning inmates of the opposite biological sex in the same housing area; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

None

## HB0316S01 compared with HB0316

### Utah Code Sections Affected:

#### AMENDS:

**17-22-5**, as last amended by Laws of Utah 2004, Chapter 301

**64-13-7**, as last amended by Laws of Utah 2016, Chapter 243

**64-13-45**, as last amended by Laws of Utah 2019, Chapters 311, 385

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **17-22-5** is amended to read:

**17-22-5. Sheriff's classification of jail inmates -- Classification criteria --**

#### **Alternative incarceration programs -- Limitation.**

(1) As used in this section, "living area" means the same as that term is defined in Section 64-13-7.

~~[(1)]~~ (2) (a) Except as provided in ~~[Subsection (4)]~~ Subsections (5) and (6), the sheriff shall adopt and implement written policies for admission of ~~[prisoners]~~ inmates to the county jail and the classification of ~~[persons]~~ individuals incarcerated in the jail which shall provide for the separation of prisoners by gender and by such other factors as may reasonably provide for the safety and well-being of inmates and the community.

(b) To the extent authorized by law, any written admission policies adopted and implemented under this Subsection (2) shall be applied equally to all entities using the county correctional facilities.

~~[(2)]~~ (3) Except as provided in ~~[Subsection (4)]~~ Subsections (5) and (6), each county sheriff shall assign ~~[prisoners]~~ inmates to a facility or section of a facility based on classification criteria that the sheriff develops and maintains.

~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(4)]~~ (6), a county sheriff may develop and implement alternative incarceration programs that may ~~[or may not]~~ involve housing ~~[a prisoner]~~ an inmate in a jail facility.

(b) ~~[A prisoner]~~ An inmate housed under an alternative incarceration program under Subsection ~~[(3)(a)]~~ (4)(a) shall be considered to be in the full custody and control of the sheriff for purposes of Section 76-8-309.

(c) ~~[A prisoner]~~ An inmate may not be placed in an alternative incarceration program under Subsection ~~[(3)(a)]~~ (4)(a) unless:

## HB0316S01 compared with HB0316

(i) the jail facility is at maximum operating capacity, as established under [~~Subsection 17-22-5.5(2)~~] Section 17-22-5.5; or

(ii) ordered by the court.

(5) A jail facility shall comply with the same requirements as the Department of Corrections described in Subsections 64-13-7(4), (5), and ~~(5)6~~ when assigning an inmate to a living area, including the reporting requirements in ~~{Subsection}~~ Subsections 64-13-45(2)(d) and (e).

~~[(4)]~~ (6) This section [~~may not be construed to~~] does not authorize a sheriff to modify provisions of a contract with the Department of Corrections to house in a county jail [~~persons~~] inmates sentenced to the Department of Corrections.

Section 2. Section **64-13-7** is amended to read:

**64-13-7. Individuals in ~~{the}~~ custody ~~{of the department}~~.**

(1) As used in this section:

(a) "Biological sex at birth" means the same as that term is defined in Section 26B-8-101.

(b) "Correctional facility" means the same as that term is defined in Section 77-16b-102.

(c) "Criminogenic factor" means a personal trait, condition, outside influence, or societal factor that tends to increase an inmate's likelihood of committing a criminal offense.

(d) (i) "Living area" means a location within a correctional facility where an inmate is assigned to sleep, recreate, study, or interact with other inmates.

(ii) "Living area" does not include a location within a correctional facility where an inmate is temporarily placed by staff of the correctional facility to facilitate transfers, visitation, medical care, or other needs of the correctional facility or inmate.

(e) "Transgender inmate" means an inmate whose gender identity or expression does not correspond with the inmate's biological sex at birth.

(2) [~~All offenders~~] An offender committed for incarceration in a state correctional facility or for supervision on probation or parole, shall be placed in the custody of the department.

(3) The department shall establish procedures and is responsible for the appropriate assignment or transfer of [~~public offenders to facilities or programs~~] an offender to a facility or

## HB0316S01 compared with HB0316

program.

(4) Subject to Subsection (5), the department or a county jail may not:

(a) assign an inmate whose biological sex at birth is male to a living area where an inmate whose biological sex at birth is female is assigned; or

(b) assign an inmate whose biological sex at birth is female to a living area where an inmate whose biological sex at birth is male is assigned.

(5) (a) Upon a request from a transgender inmate to be assigned to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth, or if the department or a county jail seeks to assign a transgender inmate to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth, the department or a county jail shall undertake an individualized security analysis considering criminogenic and other factors including:

(i) the transgender inmate's anatomy ~~{as verified}~~ which may be verified through a conversation with the transgender inmate, reviewing the transgender inmate's medical records, routine protocols applicable to all inmates, or as part of a broader medical examination of the transgender inmate conducted in private by a medical professional if necessary;

(ii) the physical characteristics of the transgender inmate;

(iii) the transgender inmate's criminal history, including whether the transgender inmate has displayed predatory behavior against individuals whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth;

(iv) the history of the transgender inmate's behavior while in the department's or a county jail's custody;

(v) the likelihood of the transgender inmate causing physical or psychological harm to, or committing offenses against, inmates in the requested living area whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth;

(vi) the safety of correctional facility staff if the transgender inmate were to be assigned to the requested living area;

(vii) an analysis of whether the transgender inmate has a history or pattern of:

(A) anti-social attitudes or behaviors;

(B) interacting with peers who display anti-social attitudes or behaviors;

(C) negative family issues or influence;

## HB0316S01 compared with HB0316

(D) a lack of achievement in education and employment;

(E) not participating in pro-social leisure activities; or

(F) substance abuse;

(viii) whether the requested living area assignment would:

(A) ensure the transgender inmate's health and safety; and

(B) assist the transgender inmate in successfully reentering the community; and

(ix) any other factor determined to be relevant by the executive director or a county sheriff.

(b) The department or a county jail may assign ~~the~~a transgender inmate to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's ~~requested living area as described in Subsection (5)(a)~~biological sex at birth only if:

(i) the department or a county jail determines, after undertaking the individualized security analysis described in Subsection (5)(a), that the assignment presents a low risk of causing:

(A) any physical or psychological harm to an inmate who resides in or will reside in the living area, the correctional facility staff that manage the living area, or the transgender inmate;

(B) disruption to correctional facility management; and

(C) overall security issues; and

(ii) there is no evidence that the transgender inmate is claiming a gender identity or expression that does not correspond with the inmate's biological sex at birth solely for the purpose of altering the inmate's living area assignment.

(6) If the department or a county jail, after complying with Subsection (5), assigns a transgender inmate to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's ~~requested living area~~biological sex at birth, the department or a county jail shall:

(a) (i) undertake the security analysis described in Subsection (5)(a) after a security incident involving the transgender inmate and at regular intervals determined by the executive director or a county sheriff to ensure that the assignment continues to meet the conditions described in Subsection (5)(b); and

(ii) if the analysis conducted in Subsection (6)(a) demonstrates that the assignment no longer meets the conditions described in Subsection (5)(b), assign the transgender inmate to a

## HB0316S01 compared with HB0316

living area with inmates whose biological sex at birth corresponds with the transgender inmate's biological sex at birth; and

(b) comply with the reporting requirements described in Subsections 64-13-45(2)(d) and (e).

Section 3. Section **64-13-45** is amended to read:

### **64-13-45. Department reporting requirements.**

(1) As used in this section:

(a) ~~(f)~~ "Biological sex at birth" means the same as that term is defined in Section 26B-8-101.

(b) (i) "In-custody death" means an inmate death that occurs while the inmate is in the custody of the department.

(ii) "In-custody death" includes an inmate death that occurs while the inmate is:

(A) being transported for medical care; or

(B) receiving medical care outside of a correctional facility, other than a county jail.

~~(b)~~ (c) "Inmate" means an individual who is processed or booked into custody or housed in the department or a correctional facility other than a county jail.

~~(c)~~ (d) "Opiate" means the same as that term is defined in Section 58-37-2.

(e) "Transgender inmate" means the same as that term is defined in Section 64-13-7.

(2) The department shall submit a report to the Commission on Criminal and Juvenile Justice~~;~~ created in Section 63M-7-201~~;~~ before June 15 of each year that includes:

(a) the number of in-custody deaths that occurred during the preceding calendar year, including:

(i) the known, or discoverable on reasonable inquiry, causes and contributing factors of each of the in-custody deaths described in Subsection (2)(a); and

(ii) the department's policy for notifying an inmate's next of kin after the inmate's in-custody death;

(b) the department policies, procedures, and protocols:

(i) for treatment of an inmate experiencing withdrawal from alcohol or substance use, including use of opiates;

(ii) that relate to the department's provision, or lack of provision, of medications used to treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all

## HB0316S01 compared with HB0316

forms of buprenorphine and naltrexone; and

(iii) that relate to screening, assessment, and treatment of an inmate for a substance use disorder or mental health disorder;

(c) the number of inmates who gave birth and were restrained in accordance with Section 64-13-46, including:

(i) the types of restraints used; and

(ii) whether the use of restraints was to prevent escape or to ensure the safety of the inmate, medical or corrections staff, or the public; ~~and~~

(d) the number of transgender inmates that are assigned to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth in accordance with Section 64-13-45, including:

(i) the results of the individualized security analysis conducted for each transgender inmate in accordance with Subsection 64-13-45(5)(a); and

(ii) a detailed explanation regarding how the security conditions described in Subsection 64-13-45(5)(b) are met for each transgender inmate;

(e) the number of transgender inmates that were:

(i) assigned to a living area with inmates whose biological sex at birth do not correspond with the transgender inmate's biological sex at birth; and

(ii) removed and assigned to a living area with inmates whose biological sex at birth corresponds with the transgender inmate's biological sex at birth in accordance with Subsection 64-13-45(6); and

~~(d)~~ (f) any report the department provides or is required to provide under federal law or regulation relating to inmate deaths.

(3) The Commission on Criminal and Juvenile Justice shall:

(a) compile the information from the reports described in Subsection (2);

(b) omit or redact any identifying information of an inmate in the compilation to the extent omission or redaction is necessary to comply with state and federal law; and

(c) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee and the Utah Substance Use and Mental Health Advisory Council before November 1 of each year.

(4) The Commission on Criminal and Juvenile Justice may not provide access to or use

## **HB0316S01 compared with HB0316**

the department's policies, procedures, or protocols submitted under this section in a manner or for a purpose not described in this section.

Section 4. **Effective date.**

This bill takes effect on May 1, 2024.